



Texas Department of Insurance

Division of Workers' Compensation

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Memorandum

To: Workers' Compensation System Participants

From: Jeff Carothers, Director of the Office of Workers' Compensation Counsel

Date: November 28, 2012

Subject: Informal Proposal: Amendments to 28 TAC §130.1 Regarding Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment

The Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC) is accepting comment on informally proposed rule to amend 28 Texas Administrative Code (TAC) §130.1, regarding Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment. The informal proposal may be viewed on the TDI website at <http://www.tdi.texas.gov/wc/rules/drafts.html>. The comment period on the informal proposal closes at 5 p.m. Central Standard Time on Friday, December 14, 2012.

The purpose of the informal proposal is to request input from workers' compensation system participants regarding the formulation of a rule amendment that would clarify the consequence of noncompliance with 28 TAC §130.1(c)(3) [see *State Office of Risk Management v. Joiner*, 363 S.W. 3d 242 (Tex. App. — Texarkana, 2012, pet. filed)]. The amendment would clarify that an impairment rating is invalid if it is based on the injured employee's condition on a date that is not the maximum medical improvement date. This amendment codifies the Division's longstanding interpretation of the rule.

This informal working draft is not a formal rule proposal. Accordingly, comments will not be treated as formal public comment for the purposes of the Administrative Procedure Act. In addition to commenting on this informal proposal, there will be the opportunity to formally comment once the rules are proposed and published in the *Texas Register*. The TDI-DWC anticipates publishing the proposal later this year. The informal working draft may contain drafting notes and formatting which will be changed as necessary to comply with the *Texas Register* formatting.

Comments may be submitted by e-mailing InformalRuleComments@tdi.state.tx.us or by mailing or delivering the comments to Maria Jimenez:

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If there are any questions regarding the information in this memo, contact Tim Eubank at (512) 804-4756 or Timothy.Eubank@tdi.state.tx.us.